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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/720,646	11/24/2003	Heini Zollinger	0115-032131	4696

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EXAMINER

PARKER, FREDERICK JOHN

ART UNIT	PAPER NUMBER
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1762

DATE MAILED: 09/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/720,646

Applicant(s)

ZOLLINGER, HEINI

Examiner

Frederick J. Parker

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 July 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 11-16, 21 and 22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 11-16, 21-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Amendment***

#### ***Specification***

The amendments/ explanations in response to the Objections of the specification of the Previous Office Action are acknowledged and appreciated, and the Examiner withdraws the objections.

#### ***Claim Rejections - 35 USC § 112***

The amendments in response to the 35 USC 112 rejections of the Previous Office Action are acknowledged and appreciated, and the Examiner withdraws the rejections.

#### ***Claim Rejections - 35 USC § 103***

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

1. Claims 11-13,16,21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Portin US 4082888 in view of Bull US 4897302 and further in view of Burley US 6021646.

Portin teaches making durable, cushioned surfaces for sports fields, playgrounds, etc in which a mixture of rubber particles and a latex solution is applied to a base surface. The particles are deformable, resilient rubber with a particle size of between about 0.1-6mm, which encompasses the ranges of claims 12 and 21. The mixture is applied, and smoothed by spreader 27, to form a desired thickness of layer 31 on base 29, and further necessarily causes at least some degree of compaction from the applied pressure. Porosity and texturing by embossing are not disclosed.

Bull teaches on col. 2, 5-25 the use of a porous structure made of a mixture of liquid (polyurethane) polymer and rubber particles (0.5-5 mm), the structure containing porous interstices to provide resiliency, and the advantage of improved grip on athletic surfaces. Texturing by mechanical embossing is not disclosed.

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Burley teaches making flooring systems for sports facilities, and includes teaching that top surfaces may be provided with a textured finish using a heated roller or texture wheel embossing means, without limitation on the regularity of textures formed. The texturizing is stated to enhance traction of persons walking or running on the surfaces.

All three references deal with the same subject matter: forming surfaces for sporting or related use with stated improvements as motivation to make the modifications. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method of Portin by substituting the porous formulation of Bull for that of Portin, and further mechanically texturizing the resultant surface as taught by Burley et al to provide the recognized improvements of enhanced resiliency and grip/ traction of persons walking or running on the surfaces.

2. Claims 14,15,22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Portin US 4082888 in view of Bull US 4897302 and further in view of Burley US 6021646 ( hereafter "Previous Prior Art") and further in view of Slosberg et al US 3267187.

The Previous Prior Art is cited for the same reasons previously discussed, which are incorporated herein.

Slosberg et al also teaches applying rubber granules in a thermoplastic matrix, which may be subsequently calendared (suggesting the use of heated or ambient rollers), embossing, hot pressing, etc which are obvious alternative means to the texturizing means of Burley to provide surface texture.

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Heated screed and rollers for compacting and texturizing are not explicitly cited. However, it is the Examiner's position that since Portin teaches spreader/ smoothing means and Slosberg et al teaches additional heated and unheated texturizing means, it would have been obvious to use other and known, functionally equivalent means such as a heated screed to provide the equivalent outcome, absent a clear and convincing showing to the contrary.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the process of the Previous Prior Art by substituting the texturizing means of Slosberg et al for those of Burley et al because of the expectation of forming a texturized surface with enhanced grip/ traction of persons walking or running on the surface.

### ***Response to Arguments***

Applicants arguments have been fully considered but are not persuasive. Applicant review<sup>s</sup> the method and concludes on pages 5-6 the Examiner's rejections would not "produce a porous covering as claimed". The Examiner notes a "porous covering" is NOT required by the claim. The single reference to porous is in the preamble of sole independent claim 11 that does not relate to the method steps which can stand on their own in the context of the claim, hence the preamble is not given patentable weight. Further, no dependant claims require porosity. Even if Applicant's could convince the Examiner otherwise, it is pointed out that (1) the preamble does not require the surface per se to be porous but only the covering itself which may comprise plural layers., and (2) Bull teaches the criticality of forming coverings for the same purpose, comprising a porous layer (abstract, etc) of a matrix polymer with resilient rubber (elastic) particles, with particle sizes of the prior art overlapping those of Applicant's claims.

Applicant argues Burley (introduced to show the importance of texturizing, using a heated roller or wheel embossing means, to enhance surface traction) teaches a preferred sandpaper or pebbled effect. Such textured effects would reasonably be called “uneven” or “irregular” which is required of claims 13 and 16, hence Burley renders those claims obvious.

Applicants argue Slosberg “does not cure the deficiency” of porous matrices. This issue is dealt with above, the responses incorporated herein. Slosberg was never intended to deal with the porosity issue, and Applicants failed to contest the real reasons Slosberg was introduced. Accordingly, the rejection is proper and the rejection of claims 14, 15 and 22 are maintained.

3. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

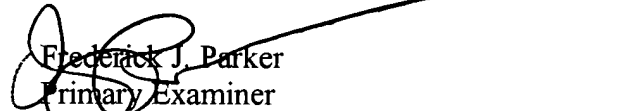
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frederick J. Parker whose telephone number is 571/ 272-1426. The examiner can normally be reached on Mon-Thur. 6:15am -3:45pm, and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Timothy Meeks can be reached on 571/272-1423. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Frederick J. Parker  
Primary Examiner  
Art Unit 1762

fjp